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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,084	03/16/2001	Mark Nelson	NLN 301	7370

7590 07/08/2002
Kolisch, Hartwell, Dickinson,
McCormack & Heuser
200 Pacific Building
520 S.W. Yamhill Street
Portland, OR 97204

EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 07/08/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,084

Applicant(s)

NELSON ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 12, and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,894,677 to Hoffman in view of U.S. Patent 1,102,436 to Richardson.

Hoffman discloses a detachable workpiece surface-gripping device having a snap-fit mounting structure (slot 758) forming a channel for receiving and generally locking an L-shaped projection (base 752) that is at a measuring tape outer end (reference end 746c). The device comprises a gripper body (extension 756) having a generally planar and circular body expanse in the form generally of a closed plane. The device is mounted to the tape's outer end such that the gripper body is located in a circumsurrounding fashion relative to the tape's nominal plane. Hoffman discloses that the gripper body must extend traverse to the lengthwise edge of the tape in order to facilitate orienting the tape and reading the tape indicia when measuring. The gripper body may also be of different shapes (see figures 7, 8, 10 and 11, and column 6, lines 20-34).

Hoffman does not disclose the gripper body having a perimeter structure formed of a row of plural, spaced, perimeter-distributed, workpiece surface-gripping tooth-like projection elements, the elements extending toward the tape and adapted for contacting and gripping the far surface of a workpiece.

Richardson discloses a workpiece surface-gripping device (arm 15) joinable to a measuring tape outer end, the device having a structure formed of a row of plural spaced workpiece surface-gripping tooth-like projection elements (teeth 17) located along the gripping device. Richardson teaches that it is beneficial to place a row of tooth-like projection elements along the workpiece-contacting surface of a measuring tape gripper body, the tooth-like projection elements extending toward the tape, in order to firmly grip an article to be measured.

Referring to claims 1, 12, and 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the gripper body disclosed by Hoffman by adding a row of tooth-like projection elements, as taught by Richardson, along the surface of the gripper body circumsurrounding the tape's nominal plane in order to grip a workpiece surface more securely while taking measurements, and since Hoffman teaches that the surface circumsurrounding the tape's nominal plane is necessary for securely gripping a surface during measurement. Furthermore, the locations of the row of tooth-like projection elements claimed by applicant, i.e., perimeter-distributed, absent any criticality, is also considered to be nothing more than a design choice since the particular location claimed by applicant is nothing more than one of numerous locations circumsurrounding the tape's nominal plane that a person of ordinary skill in the art at the time the invention was made would have been able to provide tooth-like projection elements in order to securely grip a workpiece surface while taking measurements, as already suggested by Hoffman and Richardson.

Response to Arguments

3. Applicant's arguments filed 6/5/02 have been fully considered but they are not persuasive.

4. Applicant's arguments regarding the planar body expanse is not persuasive because the planar body expanse disclosed above by Hoffman and Richardson can be considered a "generally closed plane" it has no openings on its planar surface. Furthermore, in response to applicant's arguments against the Hoffman and Richardson references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hoffman discloses that extending the surface of the body past the edges of the tape is important for securely gripping a surface during measurement. Richardson discloses that applying teeth on a surface that extends past the edges of a tape results in a more secure grip. Both references teach applying a body to the end of a tape in order to grip a surface; therefore,

the motivation to modify the body of the Hoffman reference is to provide a more secure grip as taught by Richardson.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on M-F 8:30-4:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Art Unit: 2859

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj
July 3, 2002



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800